

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

9 TRACY PETROCELLI,
10 Petitioner,
11 vs. **ORDER**
12 TIMOTHY FILSON, *et al.*,
13 Respondents.

16 In this capital habeas corpus action, in an order entered on October 9, 2013, the Court denied
17 the petitioner, Tracy Petrocelli, habeas corpus relief (ECF No. 246). Judgment was entered on the
18 same date (ECF No. 247). Petrocelli filed a “Motion to Alter or Amend Judgment Pursuant to Fed.
19 R. Civ. Proc. 59(e)” (ECF No. 248), and the Court denied that motion on April 9, 2014 (ECF No.
20 255). Petrocelli appealed, and the Ninth Circuit Court of Appeals ruled on July 5, 2017 (ECF No.
21 264), and then filed an amended opinion on August 23, 2017 (ECF No. 265). The Court of Appeals
22 filed its mandate on September 1, 2017 (ECF No. 266). On September 21, 2017, this Court ordered
23 the mandate spread upon the record (ECF No. 268).

24 The Court of Appeals affirmed this Court’s denial of relief with respect to Petrocelli’s
25 conviction, but reversed this Court’s denial of relief with respect to his death sentence; the Court of
26 Appeals remanded the case to this Court with the instruction that Petrocelli be granted relief with

1 regard to his sentence. *See* Order and Amended Opinion (ECF No. 265). The instruction of the
2 Court of Appeals is as follows:

3 We affirm the district court's denial of Petrocelli's petition for a writ of
4 habeas corpus with respect to the conviction, but reverse with respect to the death
5 sentence. We remand with instructions to grant the writ as to the penalty unless,
within a reasonable time, the State grants a new penalty phase trial or imposes a lesser
sentence consistent with the law.

6 *Id.* at 40.

7 The Court has received briefing from the parties with respect to the form of this order (ECF
8 Nos. 270, 271, 272).

9 **IT IS THEREFORE ORDERED** that petitioner's fourth amended petition for writ of
10 habeas corpus (ECF No. 162) is **GRANTED**, with respect to Claim 12 of his fourth amended
11 petition. The respondents shall, within **180 days** of the date of entry of this order, either (1) grant
12 petitioner a new penalty-phase trial, and initiate proceedings relative to that new penalty-phase trial,
13 or (2) vacate petitioner's capital sentence and impose upon him a non-capital sentence, consistent
14 with law.

15 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment accordingly.

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17 Dated this 20th day of November, 2017.

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UNITED STATES DISTRICT JUDGE
